



# PUBLIC NOTICE

Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

News Media Information 202 / 418-0500  
Fax-On-Demand 202 / 418-2830  
TTY 202 / 418-2555  
Internet: <http://www.fcc.gov>  
<ftp.fcc.gov>

DA 02-1871  
August 5, 2002

## 1670-1675 MHz BAND AUCTION SCHEDULED FOR OCTOBER 30, 2002

### Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures

Report No. AUC-02-46-C (Auction No. 46)

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## I. GENERAL INFORMATION

### A. Introduction

By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) announces the procedures and minimum opening bids for the upcoming auction of one nationwide license in the 1670-1675 MHz band scheduled for October 30, 2002 (Auction No. 46).

In accordance with the Balanced Budget Act of 1997,<sup>1</sup> the Bureau released a public notice on May 24, 2002 seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 46.<sup>2</sup> The Bureau received two comments and one reply comment in response to the *Auction No. 46 Comment Public Notice*.<sup>3</sup> The Bureau subsequently released a second public notice on July 15, 2002, revising the license inventory, auction start date, and seeking comment on revisions to proposed auction procedures.<sup>4</sup> The Bureau received one comment in response to the *Auction No. 46 Revised Comment Public Notice*.<sup>5</sup>

#### 1. Background of Proceeding

On May 24, 2002, the Commission released the *Service Rules Report & Order* which adopted service rules to govern the licensing of 27 MHz of electromagnetic spectrum reallocated for non-Government use, including the 1670-1675 MHz band.<sup>6</sup> In the *Service Rules Report & Order*, the Commission, among

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<sup>1</sup> Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251, § 3002(a) (1997) (codified at 47 U.S.C. § 309(j)(4)(F)) (“Balanced Budget Act”). The Commission’s authority to establish a reserve price or minimum opening bid is set forth in 47 C.F.R. § 1.2104(c) and (d).

<sup>2</sup> 1392-1395 and 1432-1435 MHz, 1390-1392 MHz, 1670-1675 MHz, and 2385-2390 MHz Bands Auction Scheduled for September 18, 2002; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues, *Public Notice*, DA 02-1257 (rel. May 24, 2002) (“*Auction No. 46 Comment Public Notice*”).

<sup>3</sup> ArrayComm, Inc. (“ArrayComm”) Comments, filed on June 6, 2002; AeroAstro, Inc. (“AeroAstro”) Comments, filed on June 5, 2002. AeroAstro Reply Comments, filed on June 13, 2002.

<sup>4</sup> Auction No. 46 Revised License Inventory and Auction Start Date; Comment Sought on Revisions to Auction Procedures, *Public Notice*, DA 02-1628 (rel. July 15, 2002) (“*Auction No. 46 Revised Comment Public Notice*”).

<sup>5</sup> ArrayComm Comments, filed on July 22, 2002 (“Supplemental ArrayComm Comments”).

<sup>6</sup> Amendments to Parts 1, 2, 27 and 90 of the Commission’s Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, WT Docket 02-8, *Report and Order*, 17 FCC Rcd 9980, 9982, ¶ 1 (2002) (petitions for reconsideration pending) (“*Service Rules Report and Order*”). The *Service Rules Report and Order* also adopted rules to license telemetry on a primary basis in the 1429.5-1432 MHz band and on a secondary basis in the 217-220 MHz and 1427-1429.5 MHz bands using a frequency coordinated site-by-site approach consistent with the technical specifications provided for telemetry operations under our Part 90 rules. *Id.* at 9999-10002, ¶¶ 42-51. The *Service Rules Report and Order* did not adopt rules governing the regulatory framework or service rules for the 218-219 MHz service, Automated Maritime Telecommunications System (AMTS) Service, or Low Power Radio Services (LPRS) in the 216-220 MHz band. *Id.* at 9986-87, ¶ 5. In addition, the *Service Rules Report and Order* adopted rules to govern the licensing of electromagnetic spectrum in paired 1392-1395 and 1432-1435 MHz bands and in the unpaired 1390-1392 MHz and 2385-2390 MHz bands. *Id.* at 9981-82, ¶ 1. Dates for the auction of licenses in these bands will be announce by a separate public notice.

other things, established competitive bidding procedures for the 1670-1675 MHz band; decided to assign, on a nationwide basis, one license for a 5-megahertz block of contiguous unpaired spectrum in the 1670-1675 MHz band; and determined that all operations in the 1670-1675 MHz band will be generally regulated under the framework of our Part 27 technical, licensing, and operating rules.<sup>7</sup> The Commission also explained that a non-government licensee in the 1670-1675 MHz band must comply with the provisions of Section 1.924(g) of the Commission's rules to minimize harmful interference to Geostationary Operations Environmental Satellite (GOES) earth stations receiving in the band 1670-1675 MHz. The GOES earth stations are located at Wallops Island, Virginia; Fairbanks, Alaska; and Greenbelt, Maryland.

## 2. Licenses to Be Auctioned

One nationwide license consisting of a 5-megahertz block of contiguous unpaired spectrum in the 1670-1675 MHz band will be available in Auction No. 46.

### B. Rules and Disclaimers

#### 1. Relevant Authority

Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the 1670-1675 MHz band contained in Title 47, Part 27 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in Title 47, Part 1 of the Code of Federal Regulations.<sup>8</sup> Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in this Public Notice; the *Auction No. 46 Revised Comment Public Notice*; *Auction No. 46 Comment Public Notice*; and the *Part 1 Fifth Report and Order* (as well as prior and subsequent Commission proceedings regarding competitive bidding procedures).<sup>9</sup>

Auction participants bidding on the license in the 1670-1675 MHz spectrum band should also be familiar with the *Service Rules Report and Order*.<sup>10</sup>

The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time,

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<sup>7</sup> *Id.* at ¶ 11.

<sup>8</sup> 47 C.F.R. Part 1, Subpart Q; 47 C.F.R. Part 27, Subpart J.

<sup>9</sup> Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293 (2000) modified by Erratum, DA 00-2475 (rel. November 3, 2000)) (“*Part 1 Fifth Report and Order*”). The Commission has further amended Section 1.2105 of the Competitive Bidding Rules. Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket 97-82, *Seventh Report and Order*, 16 FCC Rcd 17546, 17555, ¶ 17 (2001) (“*Part 1 Seventh Report and Order*”). On February 8, 2002, the Commission further amended Section 1.2110 of the Competitive Bidding Rules. Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket 97-82, *Eighth Report and Order*, 17 FCC Rcd 2962 (2002). Under delegated authority, the Wireless Telecommunications Bureau recently made conforming edits to service-specific competitive bidding rules and portions of the Part 1 general competitive bidding rules. Amendment of Parts 1, 21, 22, 24, 25, 26, 27, 73, 74, 80, 90, 95, 100, and 101 of the Commission Rules – Competitive Bidding, *Order*, 17 FCC Rcd 6534 (WTB 2002).

<sup>10</sup> *Service Rules Report and Order*, 17 FCC Rcd 9980.

and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554 or may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 02-152 for the *Service Rules Report and Order*).

## 2. Prohibition of Collusion

To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements.<sup>11</sup> This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. Because bidders in Auction No. 46 will be competing for the same license, they are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.<sup>12</sup>

However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.<sup>13</sup> Applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175.<sup>14</sup> If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to Section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants.<sup>15</sup> By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with Section 1.2105(c).

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<sup>11</sup> *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15297-98, ¶¶ 7-8; see 47 C.F.R. § 1.2105.

<sup>12</sup> *See In re Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A, Memorandum Opinion and Order*, 13 FCC Rcd. 11973, 11977 ¶ 11 (1998).

<sup>13</sup> *Id.*, at 11978.

<sup>14</sup> *See* 47 C.F.R. § 1.2105(c).

<sup>15</sup> *See* Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (1995).

In addition, Section 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.<sup>16</sup> Thus, Sections 1.65 and 1.2105 require an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation.<sup>17</sup> Bidders therefore are required to make such notification to the Commission immediately upon discovery.<sup>18</sup>

A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment G.

### 3. Due Diligence

Potential bidders are reminded that the 1670-1675 MHz band is being allocated for mixed use.<sup>19</sup> The Commission made clear that a geographic area licensee operating in the reallocated band must protect Federal Government operations, either indefinitely or for a given period of time.<sup>20</sup> These requirements may affect the ability of the geographic licensee to use certain portions of the electromagnetic spectrum or provide service to certain regions in their geographic license area.

**Potential bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 46.**

Accordingly, the 1670-1675 MHz licensee must protect indefinitely the Command and Data Acquisitions stations used to communicate with the GOES earth stations that are located at Wallops Island, Virginia, Fairbanks, Alaska, and Greenbelt, Maryland.<sup>21</sup> The 1670-1675 MHz licensee must also comply with the

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<sup>16</sup> See 47 C.F.R. § 1.65.

<sup>17</sup> 47 C.F.R. §§ 1.65 and 1.2105.

<sup>18</sup> The Commission amended Section 1.2105 to require auction applicants to report prohibited communications in writing to the Commission immediately, but in no case later than five business days after the communication occurs. *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555, ¶ 17.

<sup>19</sup> In the United States, radio spectrum may be allocated for exclusive Federal Government use, exclusive non-Federal Government use, or shared use. See 47 C.F.R. § 2.105(b). Mixed use is a type of shared use whereby Federal Government use is limited by geographic area, by time, or by other means so as to guarantee that the potential use by Federal Government stations is substantially less than the potential use to be made by non-Federal Government stations. See OBRA-93 at § 113(b)(2)(B). See also 47 U.S.C. § 923(b)(2)(B).

<sup>20</sup> See U.S. Department of Commerce, NTIA Special Publication 95-32, "Spectrum Reallocation Final Report: Response to Title VI of the Omnibus Budget Reconciliation Act of 1993" (February 1995) (NTIA Special Publication 95-32); see also U.S. Department of Commerce, NTIA Special Publication 98-36, "Spectrum Reallocation Report: Response to Title III of the Balanced Budget Act of 1997" (February 1998) (NTIA Special Publication 98-36); see also Memorandum to Fred Thomas, FCC Liaison Representative, Interdepartment Radio Advisory Committee, from Gerald Hurt, Chief, Spectrum Engineering and Analysis Division, National Telecommunications and Information Administration (dated Aug. 14, 2001) (2001 NTIA Memorandum).

<sup>21</sup> Reallocation of the 216-220 MHz, 1390-1392 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, ET Docket No. 00-221, *Report and Order and Memorandum Opinion and Order*, 17 FCC Rcd 368, 396, ¶ 65 (2002) ("*Reallocation Report and Order*"); *Service Rules Report & Order*, 17 FCC Rcd at 10042, ¶¶ 163-65; 47 C.F.R. § 1.924(f).

Quiet Zone requirements of Section 1.924 of the Commission's Rules.

Before planning to construct and operate a new or modified station within 100 kilometers of the Wallops Island, Virginia and Fairbanks, Alaska stations or within 65 kilometers of the Greenbelt, Maryland station, the 1670-1675 MHz licensee must notify the National Oceanic and Atmospheric Administration (NOAA) of the proposed operation. NOAA's GOES coordination web page, at <http://www.osd.noaa.gov/radio/frequency/htm>, provides the technical parameters of the earth stations and the point-of-contact notification information. Additionally, the licensee must file an application with the Commission requesting authority to operate the new or modified station. This application should be filed through the Commission's Universal Licensing System. The application should state the date that notification to NOAA was made. After the Commission receives an application, NOAA has 20 days to comment or object to the proposed new or modified station. If NOAA objects during the 20-day period, the Commission will take whatever action is deemed appropriate. In the absence of an objection by NOAA, the Commission will grant the application if it is otherwise acceptable.

Potential bidders for "near the border" licenses must protect stations in Canada and Mexico from harmful interference. This will permit licensees to maximize their operations depending on the spectrum use, terrain, and other factors at the border areas, while still protecting operations across the border. However, operations in the 1670-1675 MHz band may be subject to future agreements with Canada and Mexico and therefore may be subject to further modification.<sup>22</sup>

The Commission makes no representations or guarantees regarding the accuracy or completeness of the information concerning Federal Government incumbents that appears in this Public Notice or third party documents. Potential bidders who have questions regarding Federal Government use of the 1670-1675 MHz band may contact Gerald F. Hurt, Chief, Spectrum Engineering and Analysis Division, National Telecommunications and Information Administration, Room 6725, 1401 Constitution Ave., N.W., Washington, D.C., 20230, at (202) 482-4107, via fax at (202) 482-4595, or at [ghurt@ntia.doc.gov](mailto:ghurt@ntia.doc.gov).

Potential bidders also should be aware that certain applications, petitions for rulemaking, requests for special temporary authority ("STA"), waiver requests, petitions for reconsideration,<sup>23</sup> and applications for review may be pending before the Commission and relate to particular applicants or incumbent Federal entities. In addition, certain judicial proceedings that may relate to particular applicants or the license available in Auction No. 46 may be commenced, or may be pending, or may be the subject to further review. We note that resolution of these matters could have an impact on the availability of spectrum in Auction No. 46. Some of these matters (whether before the Commission or the courts) may not be resolved by the time of the auction.

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<sup>22</sup> *Service Rules Report and Order*, 17 FCC Rcd at 10046, ¶ 177.

<sup>23</sup> The Commission received the following petitions for reconsideration of the *Service Rules Report and Order*: Petition for Partial Reconsideration, filed by the Aerospace and Flight Test Radio Coordinating Council on July 22, 2002; Petition for Partial Reconsideration, filed by Celtronix Telemetry, Inc on July 22, 2002; Petition for Partial Reconsideration of XM Radio, Inc., filed by XM Radio, Inc. on July 22, 2002; Petition for Clarification, filed by Final Analysis Communication Services, Inc. on July 22, 2002; Petition for Reconsideration of Itron, Inc., filed on July 22, 2002; Petition for Reconsideration of the American Society for Health Care Engineering of the American Hospital Association, filed on July 22, 2002. Electronic copies of these petitions are available through the Commission's Electronic Comment Filing System website at [http://gullfoss2.fcc.gov/prod/ecfs/comsrch\\_v2.cgi](http://gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi).

#### 4. Bidder Alerts

All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.<sup>24</sup> Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

**The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.**

As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 46 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a “cold call” from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service (“IRS”), Federal Trade Commission (“FTC”), Securities and Exchange Commission (“SEC”), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals regarding Auction No. 46 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

#### 5. National Environmental Policy Act (“NEPA”) Requirements

The licensee must comply with the Commission’s rules regarding the National Environmental Policy Act

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<sup>24</sup> See 47 C.F.R. § 1.2105.

(NEPA).<sup>25</sup> The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility.<sup>26</sup> The Commission's NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

**C. Auction Specifics**

**1. Auction Date**

The auction will begin on Wednesday, October 30, 2002. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding will be conducted on each business day until bidding has stopped on the license.

**2. Auction Title**

Auction No. 46 – 1670-1675 MHz Band

**3. Bidding Methodology**

The bidding methodology for Auction No. 46 will be multiple round, ascending auction.<sup>27</sup> The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

**4. Pre-Auction Dates and Deadlines**

Auction Seminar .....	September 18, 2002
Short-Form Application (FCC FORM 175) .....	September 25, 2002; 6:00 p.m. ET
Upfront Payments (via wire transfer) .....	October 9, 2002; 6:00 p.m. ET
Mock Auction .....	October 25, 2002
Auction Begins.....	October 30, 2002

**5. Requirements For Participation**

Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6:00 p.m. ET, September 25,

<sup>25</sup> See 47 C.F.R. Ch. 1, Subpart I.

<sup>26</sup> See 47 C.F.R. §§ 1.1305-1.1319.

<sup>27</sup> An ascending multiple round auction is the same as a simultaneous multiple round auction, but with only one license available for bid.

2002.

- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, October 9, 2002.
- Comply with all provisions outlined in this public notice.

## 6. General Contact Information

### GENERAL AUCTION INFORMATION

General Auction Questions  
Seminar Registration

FCC Auctions Hotline  
(888) 225-5322, Press Option #2  
or direct (717) 338-2888  
Hours of service: 8 a.m. – 5:30 p.m. ET

### AUCTION LEGAL INFORMATION

Auction Rules, Policies, Regulations

Auctions and Industry Analysis Division  
Legal Branch (202) 418-0660

### LICENSING INFORMATION

Rules, Policies, Regulations  
Licensing Issues  
Due Diligence  
Incumbency Issues

Public Safety & Private Wireless Division  
(202) 418-0680

### TECHNICAL SUPPORT

Electronic Filing  
Automated Auction System

FCC Auctions Technical Support Hotline  
(202) 414-1250 (Voice),  
(202) 414-1255 (TTY)  
Hours of service: Monday through Friday 8 a.m. to  
6:00 p.m. ET

### PAYMENT INFORMATION

Wire Transfers  
Refunds

FCC Auctions Accounting Branch  
(202) 418-1995  
(202) 418-2843 (Fax)

### TELEPHONIC BIDDING

Will be furnished only to qualified bidders

### FCC COPY CONTRACTOR

Additional Copies of  
Commission Documents

Qualex International  
Portals II, 445 12<sup>th</sup> Street, SW, Room CY-B402  
Washington, DC 20554  
(202) 863-2893  
(202) 863-2898 (Fax)  
qualexint@aol.com (E-mail)

### PRESS INFORMATION

Meribeth McCarrick (202) 418-0654

### FCC FORMS

(800) 418-3676 (outside Washington, DC)  
(202) 418-3676 (in the Washington Area)  
<http://www.fcc.gov/formpage.html>

**FCC INTERNET SITES**

<http://www.fcc.gov>

<http://wireless.fcc.gov/auctions>

<http://wireless.fcc.gov/uls>

## II. SHORT-FORM (FCC FORM 175) APPLICATION REQUIREMENTS

Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D to this public notice. The short-form application seeks the applicant's name and address, legal classification, status, small or very small business bidding credit eligibility, identification of the license sought, the authorized bidders and contact persons. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license and, as discussed below in Section II.D (Provisions Regarding Defaulters and Former Defaulters), that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

### A. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

All applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by Sections 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to file an "Exhibit A" providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in Section 1.2112 of the Commission's rules.<sup>28</sup>

### B. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)

Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the license being auctioned, including any agreements relating to post-auction market structure.<sup>29</sup> Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, or bidding strategies.<sup>30</sup> As discussed above, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with applicants after the deadline.<sup>31</sup> Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an "Exhibit B" to the FCC Form 175.

A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint

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<sup>28</sup> 47 C.F.R. § 1.2105 requires the disclosure on the short-form of the applicant's ownership information as set forth in 47 C.F.R. § 1.2112. Note that both of these sections were revised in the *Part 1 Fifth Report and Order*.

<sup>29</sup> 47 C.F.R. §§ 1.2105(a)(2)(viii), (c)(1).

<sup>30</sup> 47 C.F.R. § 1.2105(a)(2)(ix).

<sup>31</sup> See Section I.B.2, above.

bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants.<sup>32</sup> While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

### C. Eligibility

#### 1. Bidding Credit Eligibility (FCC Form 175 Exhibit C)

Bidding credits will be available to small and very small businesses, or consortia, thereof, as defined in 47 C.F.R. § 27.906 for the 1670-1675 MHz band. A bidding credit represents the amount by which the bidder's winning bid is discounted.<sup>33</sup> The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests:

- A bidder with attributed average annual gross revenues of not more than \$15 million for the preceding three years ("very small business") receives a 25 percent discount on its winning bid;<sup>34</sup>
- A bidder with attributed average annual gross revenues of not more than \$40 million for the preceding three years ("small business") receives a 15 percent discount on its winning bid.<sup>35</sup>

Bidding credits are not cumulative; a qualifying applicant receives either the 15 percent or 25 percent bidding credit on its winning bid, but not both.

#### 2. Tribal Land Bidding Credit

To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. *See* Part V.D. of this Public Notice.

#### 3. Applicability of Part 1 Attribution Rules

**Controlling interest standard.** On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order*, in which the Commission, *inter alia*, adopted a "controlling interest" standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions.<sup>36</sup> The Commission observed that the rule modifications adopted in the various Part 1 orders would result in discrepancies and/or redundancies between certain of the new Part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the

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<sup>32</sup> *See* 47 C.F.R. § 1.2105(c)(4)(i), (ii).

<sup>33</sup> *See* 47 C.F.R. §§ 1.2110(f), 27.906.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> The eligibility for small business preferences will be determined based on the attribution rules in effect at the short-form application deadline. *See Part 1 Fifth Report and Order*, 15 FCC Rcd at 15327, ¶ 67.

Part 1 proceeding.<sup>37</sup> Part 1 rules that supersede inconsistent service-specific rules will control in Auction No. 46.<sup>38</sup> Accordingly, the “controlling interest” standard as set forth in the Part 1 rules will be in effect for Auction No. 46.<sup>39</sup>

**Control.** The term “control” includes both *de facto* and *de jure* control of the applicant. Typically, ownership of at least 50.1 percent of an entity’s voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis.<sup>40</sup> The following are some common indicia of *de facto* control:

- the entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- the entity plays an integral role in management decisions.

**Attribution for small and very small business eligibility.** In determining which entities qualify as small or very small businesses, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, the applicant and its affiliates, will be counted in determining small business eligibility.

A consortium of small or very small businesses is a “conglomerate organization formed as a joint venture between or among mutually independent business firms,” each of which *individually* must satisfy the definition of small and very small business in Sections 1.2110(f), 27.906. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. We note that although the gross revenues of the consortium members will not

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<sup>37</sup> Part 1 Fifth Report and Order, 15 FCC Rcd at 15330, ¶ 78.

<sup>38</sup> See Amendment of Part 1 of the Commission’s Rules-Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 382, ¶ 5 (1997) (“Part 1 Third Report and Order”); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15330, ¶ 78.

<sup>39</sup> The Bureau recently made conforming edits to service-specific competitive bidding rules and portions of the Part 1 general competitive bidding rules. Amendment of Parts 1, 21, 22, 24, 25, 26, 27, 73, 74, 80, 90, 95, 100, and 101 of the Commission Rules – Competitive Bidding, *Order*, 17 FCC Rcd 6534 (2002). These rule modifications will become effective on August 8, 2002.

<sup>40</sup> For further guidance on the issue of *de facto* control, see the Commission’s affiliation rule at 47 C.F.R. § 1.2110(b)(5); see also *Ellis Thompson Corp.*, *Summary Decision of Administrative Law Judge Joseph Chachkin*, 10 FCC Rcd. 12554, 12555-56 (1994), in which the Commission identified the following factors used to determine control of a business: (1) use of facilities and equipment; (2) control of day-to-day operations; (3) control of policy decisions; (4) personnel responsibilities; (5) control of financial obligations; and (6) receipt of monies and profits; *Intermountain Microwave*, 12 FCC 2d. 559 (1963), and *Application of Baker Creek Communications, L.P.*, for Authority to Construct and Operate Local Multipoint Distribution Services in Multiple Basic Trading Areas, *Memorandum Opinion and Order*, 13 FCC Rcd. 18709 (1998).

be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

#### 4. Supporting Documentation

Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as small or very small businesses (or consortia of small or very small businesses) for this auction.<sup>41</sup>

Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

***Small or very small business eligibility (Exhibit C).*** Entities applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (1) the applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests. **Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for each of the preceding three years, as well as a statement of total average gross revenues for the three-year period.** If the applicant is applying as a consortium of small or very small businesses, this information must be provided for each consortium member.

#### D. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)

Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency.<sup>42</sup> In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interest have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, for each of its controlling interests and affiliates, and for each affiliate of its controlling interests, as defined by Section 1.2110 of the Commission's rules.<sup>43</sup> **Applicants must include this statement as Exhibit D of the FCC Form 175.** Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

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<sup>41</sup> See 47 C.F.R. § 1.2105.

<sup>42</sup> 47 C.F.R. § 1.2105(a)(2)(x).

<sup>43</sup> 47 C.F.R. § 1.2105(a)(2)(xi).

“Former defaulters” — *i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies — are eligible to bid in Auction No. 46, provided that they are otherwise qualified. However, as discussed *infra* in Section III.D.3, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.<sup>44</sup>

#### **E. Installment Payments**

Installment payment plans will not be available in Auction No. 46.

#### **F. Other Information (FCC Form 175 Exhibits E and F)**

Applicants owned by minorities or women, as defined in 47 C.F.R. § 1.2110(c)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of “designated entities” in its auctions. Applicants wishing to submit additional information may do so on Exhibit F (Miscellaneous Information) to the FCC Form 175.

#### **G. Minor Modifications to Short-Form Applications (FCC Form 175)**

After the short-form filing deadline (September 25, 2002), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change the certifying official, change control of the applicant, or change bidding credits). *See* 47 C.F.R. § 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: [auktion46@fcc.gov](mailto:auktion46@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 46. The Bureau requests that parties format any attachments to electronic mail as Adobe<sup>®</sup> Acrobat<sup>®</sup> (pdf) or Microsoft<sup>®</sup> Word documents.

A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850. Questions about other changes should be directed to Francis Gutierrez of the Auctions and Industry Analysis Division at (202) 418-0660.

#### **H. Maintaining Current Information in Short-Form Applications (FCC Form 175)**

Applicants have an obligation under 47 C.F.R. § 1.65, to maintain the completeness and accuracy of information in their short-form applications.<sup>45</sup> Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 C.F.R. § 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

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<sup>44</sup> 47 C.F.R. § 1.2106(a).

<sup>45</sup> 47 C.F.R. § 1.65.

### **III. PRE-AUCTION PROCEDURES**

#### **A. Auction Seminar**

On Wednesday, September 18, 2002, the FCC will sponsor a free seminar for Auction No. 46 at the Federal Communications Commission, located at 445 12<sup>th</sup> Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, the FCC Automated Auction System, and the 1670-1675 MHz band and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

To register, complete the registration form found in Attachment B and submit it by Monday, September 16, 2002. Registrations are accepted on a first-come, first-served basis.

#### **B. Short-Form Application (FCC Form 175) — Due September 25, 2002**

In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6:00 p.m. ET on September 25, 2002. Late applications will not be accepted.

There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See Part III.D, below.*

##### **1. Electronic Filing**

Applicants must file their FCC Form 175 applications electronically.<sup>46</sup> Applications may generally be filed at any time beginning at noon ET on September 18, 2002, until 6:00 p.m. ET on September 25, 2002. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on September 25, 2002.

Applicants must press the “SUBMIT Application” button on the “Submission” page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); the hours of service Monday through Friday, from 8:00 AM to 6:00 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded.*

Applicants can also contact Technical Support via e-mail. To obtain the address, click the **Support** tab on the Form 175 Homepage.

##### **2. Completion of the FCC Form 175**

Applicants should carefully review 47 C.F.R. § 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of this public notice. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D to this public notice provide information on the required attachments and appropriate formats.

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<sup>46</sup> *See 47 C.F.R. § 1.2105(a).*

### **3. Electronic Review of FCC Form 175**

The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. NOTE: Applicants should not include sensitive information (*i.e.*, TIN/EIN) on any exhibits to their FCC Form 175 applications. There is no fee for accessing this system. *See* Attachment C for details on accessing the review system.

#### **C. Application Processing and Minor Corrections**

After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

As described more fully in the Commission's rules, after the September 25, 2002, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change the certifying official, change control of the applicant, or change bidding credit eligibility).<sup>47</sup>

#### **D. Upfront Payments — Due October 9, 2002**

In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6:00 p.m. ET on October 9, 2002.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 46 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the October 9, 2002, deadline will result in dismissal of the application and disqualification from participation in the auction.

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<sup>47</sup> See 47 C.F.R. § 1.2105; *see also* Two Way Radio of Carolina, Inc., *Memorandum, Opinion and Order*, 14 FCC Rcd. 12035 (1999).

## 1. Making Auction Payments by Wire Transfer

Wire transfer payments must be received by 6:00 p.m. ET on October 9, 2002. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261  
Receiving Bank: Mellon Pittsburgh  
BENEFICIARY: FCC/Account # 910-0180  
OBI Field: (Skip one space between each information item)  
"AUCTIONPAY"  
FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 11 and/or 21)  
PAYMENT TYPE CODE (same as FCC Form 159, block 24A: A46U)  
FCC CODE 1 (same as FCC Form 159, block 28A: "46")  
PAYER NAME (same as FCC Form 159, block 2)  
LOCKBOX NO. # 358420

**NOTE:** The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209-6045 **at least one hour before** placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer — Auction Payment for Auction Event No. 46." **Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.**

## 2. FCC Form 159

A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E to this public notice. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

## 3. Amount of Upfront Payment

In the *Part 1 Order* the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction.<sup>48</sup> In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that "former defaulters," *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-"former defaulters."<sup>49</sup> For purposes of

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<sup>48</sup> Amendment of Part 1 of the Commission's rules — Competitive Bidding Proceeding, WT Docket No. 97-82, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd. 5686, 5697-5698, ¶ 16 (1997) ("*Part 1 Order*").

<sup>49</sup> *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-17, ¶¶ 40-42; 47 C.F.R. § 1.2106(a); *see* 47 C.F.R. §§1.2105(a)(2)(xi)

this calculation, the “applicant” includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by Section 1.2110 of the Commission’s rules (as amended in the *Part 1 Fifth Report and Order*).<sup>50</sup>

In the *Auction No. 46 Comment Public Notice*, we proposed translating bidders’ upfront payments to bidding units to define a bidder’s maximum eligibility.<sup>51</sup> In order to bid on the license, otherwise qualified bidders must have an eligibility level that meets the number of bidding units assigned to that license. At a minimum, therefore, an applicant’s total upfront payment must be enough to establish eligibility to bid on the license or else the applicant will not be eligible to participate in the auction.

In the *Auction No. 46 Comment Public Notice*,<sup>52</sup> the Bureau proposed an upfront payment of \$12,628,000 for the nationwide 1670-1675 MHz license using the following formula:<sup>53</sup>

\$0.01 \* MHz \* License Area Population with a minimum of \$1,000.

ArrayComm and AeroAstro submitted comments regarding the Bureau’s proposed formula for calculating the upfront payment for Auction No. 46.<sup>54</sup> ArrayComm supports the Bureau’s proposed upfront payment because it is appropriate given the nationwide scope of the license.<sup>55</sup> AeroAstro, on the other hand, suggests that the proposed upfront payment is excessively high and may reduce potential participation and competition in the auction.<sup>56</sup> AeroAstro recommends that the Commission reduce the upfront payment by a factor of ten, resulting in an upfront payment of \$1,262,800.

We adopt our upfront payment as proposed. Given the nationwide scope of the 1670-1675 MHz license, we believe that the proposed upfront payment, as validated by the comments of ArrayComm, is appropriate.

The specific upfront payments and bidding units for the nationwide 1670-1675 MHz license is set forth in Attachment A of this Public Notice.

Former defaulters should calculate their upfront payment by multiplying the number of bidding units by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

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<sup>50</sup> *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-17, ¶¶ 40-42.

<sup>51</sup> *Auction No. 46 Comment Public Notice* at 4.

<sup>52</sup> *Id.*

<sup>53</sup> All population figures are from the 4/1/90 U.S. Census, U.S. Department of Commerce, Bureau of the Census. Results below \$10,000 are rounded to the nearest hundred; results above \$10,000 are rounded to the nearest thousand.

<sup>54</sup> ArraComm Comments; AeroAstro Comments; AeroAstro Reply Comments.

<sup>55</sup> ArrayComm Comments at 4.

<sup>56</sup> AeroAstro Comments at 2-5; AeroAstro Reply Comments.

#### 4. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

The Commission will use wire transfers for all Auction No. 46 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed below be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418-2843 by October 9, 2002. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call (202) 418-1995.

Name of Bank  
ABA Number  
Contact and Phone Number  
Account Number to Credit  
Name of Account Holder  
FCC Registration Number (FRN)  
Taxpayer Identification Number (see below)  
Correspondent Bank (if applicable)  
ABA Number  
Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Part V.F., *below*.

#### E. Auction Registration

Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on the license.

All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) required to place bids and the other containing the SecurID cards. **These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.**

Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, October 23, 2002, should contact the Auctions Hotline at (717) 338-2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing in person at the FCC Auction Headquarters located at 445 12<sup>th</sup> St., SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo

identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

#### **F. Electronic Bidding**

The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically, *i.e.*, over the Internet or the FCC's Wide Area Network at \$2.30 per minute. In either case, **each authorized bidder** must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System User Manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction, therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 46. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175.

Please note that the SecurID cards can be recycled, and we encourage bidders to return the cards to the FCC. We will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

#### **G. Mock Auction**

All qualified bidders will be eligible to participate in a mock auction on Friday, October 25, 2002. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

### **IV. AUCTION EVENT**

The first round of bidding for Auction No. 46 will begin on Wednesday, October 30, 2002. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

#### **A. Auction Structure**

##### **1. Ascending Multiple Round Auction**

In the *Auction No. 46 Comment Public Notice*, we proposed to award all licenses in Auction No. 46 in a single, simultaneous multiple round auction.<sup>57</sup> We received one comment on this issue. ArrayComm agrees with our proposal stating that the simultaneous multiple round structure is most likely to result in efficient bidding, thereby awarding the license to the party with the greatest ability to bring innovative services to consumers.<sup>58</sup> We note that an “ascending multiple round auction” is the same as a simultaneous multiple round auction, but with only one license available for bid. We conclude that it is

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<sup>57</sup> *Auction No. 46 Comment Public Notice* at 4.

<sup>58</sup> ArrayComm Comments at 3

operationally feasible and appropriate to auction the license in the 1670-1675 MHz band through a single, ascending multiple round auction. Unless otherwise announced, bids will be accepted on the license in each round of the auction.

## 2. Maximum Eligibility and Activity Rules

In the *Auction No. 46 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder.<sup>59</sup> We received no comments on this issue.

For Auction No. 46, we will adopt our proposal that the amount of upfront payment submitted by a bidder would determine the eligibility (in bidding units) for participation in Auction No. 46. Bidders are reminded that the upfront payment is a refundable deposit made by each bidder to determine and establish eligibility to bid on the license. The upfront payment does not affect the total dollars a bidder may bid on the license.

In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their current eligibility during each round of the auction. In the *Auction No. 46 Revised Comment Public Notice*, because only one license will be available for auction, we proposed a single stage auction with each bidder required to be active on one hundred (100) percent of its bidding eligibility in each round.<sup>60</sup>

Only one commenter addressed the Bureau's revised proposal. ArrayCom states that monitoring the bidding activity of only one license makes the evaluation and bidding process of necessity more straightforward for participants.<sup>61</sup> Therefore, in order to ensure that the auction closes within a reasonable period of time, we adopt our proposal with the following activity requirements: a bidder must either place a valid bid and/or be the standing high bidder during each round of the auction rather than wait until the end before participating. Bidders are required to be active on 100 percent of their maximum eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's bidding eligibility, thus eliminating the bidder from the auction.

## 3. Activity Rule Waivers and Reducing Eligibility

In the *Auction No. 46 Revised Comment Public Notice*, we proposed that each bidder in the auction would be provided two activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction.<sup>62</sup> ArrayComm agreed with our proposal that two waivers would be appropriate in light of the auction's narrowed scope.<sup>63</sup>

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<sup>59</sup> *Auction No. 46 Comment Public Notice* at 4.

<sup>60</sup> *Id.* at 2.

<sup>61</sup> Supplemental ArrayComm Comments at 3.

<sup>62</sup> *Auction No. 46 Revised Comment Public Notice* at 5.

<sup>63</sup> Supplemental ArrayComm Comments at 2.

Based upon our experience in previous auctions, **we adopt our proposal that each bidder be provided two activity rule waivers that may be used in any round during the course of the auction.** Use of an activity rule waiver preserves the bidder’s current bidding eligibility despite the bidder’s activity in the current round being below the required minimum level. We are satisfied that our practice of providing two waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction.

The Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an “automatic waiver”) at the end of any round where a bidder’s activity level is below the minimum required. If there are no activity rule waivers available, the bidder’s eligibility will be reduced, eliminating them from the auction

Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a round in which no bids are submitted, the auction will remain open and the bidder’s eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new valid bids will not keep the auction open. **Note: Once a proactive waiver is placed during a round, that waiver cannot be unsubmitted.**

#### 4. Auction Stopping Rules

For Auction No. 46, the Bureau proposed to employ a simultaneous stopping rule approach.<sup>64</sup> The Bureau also sought comment on a modified version of the stopping rule. The modified version of the stopping rule would close the auction after the first round in which no bidder submits a proactive waiver or a new bid on the license when it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on the license for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

The Bureau further proposed retaining the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility, thus eliminating the bidder from the auction.

In addition, we proposed that the Bureau reserve the right to declare that the auction will end after a designated number of additional rounds (“special stopping rule”). We proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time.<sup>65</sup> Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day and/or adjusting the amount of the minimum bid increments for the license.

We received no comments concerning the auction stopping rules therefore, we adopt the above proposals. Auction No. 46 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion

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<sup>64</sup> *Auction No. 46 Comment Public Notice* at 10-11.

<sup>65</sup> *Id.* at 11.

to invoke the other versions of the stopping rule. We believe that these stopping rules are most appropriate for Auction No. 46, because our experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

## **5. Auction Delay, Suspension, or Cancellation**

In the *Auction No. 46 Comment Public Notice*, we proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.<sup>66</sup>

Because this approach has proven effective in resolving exigent circumstances in previous auctions, we adopt our proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

### **B. Bidding Procedures**

#### **1. Round Structure**

The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the above public notice referenced above.

The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

#### **2. Reserve Price or Minimum Opening Bid**

*Background.* The Communications Act, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.<sup>67</sup> Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.<sup>68</sup> Among other factors, the Bureau should consider

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<sup>66</sup> *Id.* at 5.

<sup>67</sup> *See* Balanced Budget Act, section 3002(a), 47 U.S.C. § 309(j)(4)(F).

<sup>68</sup> *See Part 1 Third Report and Order*, 13 FCC Rcd 374, 455-456 ¶ 141 (1997).

the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned.<sup>69</sup> The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.<sup>70</sup>

In the *Auction No. 46 Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 46.<sup>71</sup> Specifically, for Auction No. 46, the Bureau proposed a minimum opening bid of \$12,628,000 for the nationwide license using the following formula:<sup>72</sup>

\$0.01 \* MHz \* License Area Population with a minimum of \$1,000.

In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.<sup>73</sup>

ArrayComm and AeroAstro submitted comments regarding the Bureau's proposed formula for calculating minimum opening bids for Auction No. 46. ArrayComm supports the Bureau's proposed minimum opening bid, stating that it will ensure a successful outcome overall for the auction.<sup>74</sup> AeroAstro, on the other hand, suggests that the multi-million dollar minimum opening bid for the license in the 1670-1675 MHz Band is an artificially high barrier to entry and may defeat the purpose of the auction by eliminating bidders.<sup>75</sup> AeroAstro proposes the following formula for calculating minimum opening bids for the nationwide license: \$ 0.002 \* MHz \* License Area Population.

We adopt our minimum opening bid as proposed. We believe that the minimum opening bid, as adopted, is appropriate.

The specific minimum opening bid for the license is set forth in Attachment A of this Public Notice.

### 3. Minimum Accepted Bids and Bid Increments

In the *Auction No. 46 Comment Public Notice*, we proposed to use a smoothing methodology to calculate minimum acceptable bids.<sup>76</sup> We further proposed to retain the discretion to change the minimum

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<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Auction No. 46 Comment Public Notice* at 7.

<sup>72</sup> All population figures are from the 4/1/90 U.S. Census, U.S. Department of Commerce, Bureau of the Census. Results below \$10,000 are rounded to the nearest hundred; results above \$10,000 are rounded to the nearest thousand.

<sup>73</sup> *Auction 44 Comment Public Notice* at 6-7.

<sup>74</sup> ArrayComm Comments at 5-6.

<sup>75</sup> AeroAstro Comments at 2-5; AeroAstro Reply Comments.

<sup>76</sup> *Auction No. 46 Comment Public Notice* at 7-9.

acceptable bids and bid increments if circumstances so dictate.<sup>77</sup>

ArrayComm suggests that because the license inventory for Auction No. 46 is reduced, to one license, a smaller bid increment is more appropriate. It notes that while higher bid increments can maintain the pace of large-scale auctions, they are not necessary under a single-license auction event such as Auction No. 46. ArrayComm further asserts that a reduced minimum bid increment may, in fact, increase auction efficiency in this scenario.<sup>78</sup>

We adopt our proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is included as Attachment F.

Upon consideration of ArrayComm's comments, we will set the weighting factor at 0.5, the minimum percentage increment at 0.05 (5 percent), and the maximum at 0.2 (20 percent).<sup>79</sup> Because only a single license is available in Auction No. 46, we believe that it is appropriate to set the minimum bid increment at 5 percent. The Bureau reiterates that it retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstance so dictate. The Bureau will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. The Bureau also retains the discretion to use alternate methodologies, such as a flat percentage increment, for Auction No. 46 if circumstances warrant.

#### **4. High Bid**

At the end of each bidding round, the Automated Auction System determines the standing high bid for the license based on the gross dollar amounts of the bids received.

In the case of tied high bids, a random number generator will be used to determine the standing high bid. A random number will be assigned to each bid. The tie bid having the highest random number will become the standing high bid.

#### **5. Bidding**

During a bidding round, a bidder may submit a bid (subject to its eligibility) as well as remove a bid placed in the same bidding round. If a bidder submits multiple bids for the license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with the license for which the bidder has removed its bid do not count towards the bidder's activity at the close of the round.

Please note that all bidding will take place remotely either through the Automated Auction System or by

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<sup>77</sup> *Id.*

<sup>78</sup> ArrayComm Comments at 6; Supplemental ArrayComm Comments at 4-6.

<sup>79</sup> *Auction No. 46 Comment Public Notice at 7-9.*

telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, five to ten minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 46.

The Automated Auction System requires each bidder to be logged in during the bidding round using the bidder identification number provided in the registration materials, and the generated SecurID code. Bidders are strongly encouraged to print bid confirmations after they submit their bid.

In each round, eligible bidders will be able to place a bid on the license in any of nine different amounts.<sup>80</sup> The Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine acceptable bid amounts.

Once there is a standing high bid on the license, the Automated Auction System will calculate a minimum acceptable bid for the following round. The difference between the minimum acceptable bid and the standing high bid will define the *bid increment*. The nine acceptable bid amounts consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

Until a bid has been placed on the license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded,<sup>81</sup> and the minimum opening bid. Therefore, when the minimum percentage increment equals 0.05, the first additional bid amount will be approximately five percent higher than the minimum opening bid; the second, ten percent; the third, fifteen percent; etc.

See Attachment F for more detail on the calculation of the various bid amounts.

## 6. Bid Removal and Bid Withdrawal

In the *Auction No. 46 Comment Public Notice*, the Bureau proposed bid removal and bid withdrawal rules.<sup>82</sup> The Bureau however revised its proposal concerning withdrawals in the *Auction No. 46 Revised Comment Public Notice*.<sup>83</sup> It proposed that bidders would not be permitted to withdraw bids in any round since Auction No. 46 had been limited to a single license. No commenters disagreed with our proposal. Therefore we will adopt our proposal and will not permit bidders to withdrawal bids in any rounds during the auction.

**Procedures.** Before the close of a bidding round, a bidder has the option of removing any bid placed in

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<sup>80</sup> Bidders must have sufficient eligibility to place a bid on the particular license. See Section III.D.3 “Amount of Upfront Payment,” *infra*.

<sup>81</sup> The product of the minimum opening bid times one plus the minimum percentage increment is rounded to the nearest thousand if it is over ten thousand, to the nearest hundred if it is under ten thousand but over one thousand, or to the nearest ten if it is below one thousand.

<sup>82</sup> *Auction No. 46 Comment Public Notice* at 10.

<sup>83</sup> *Auction No. 46 Revised Comment Public Notice* at 2.

that round. By using the “remove bid” function in the bidding system, a bidder may effectively “unsubmit” a bid placed within that round. Removing a bid will affect a bidder’s activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder’s activity requirement. Once a round closes, a bidder may no longer remove a bid.

## **7. Round Results**

Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, current high bid, new minimum accepted bid, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders’ identities and bidder identification numbers for Auction No. 46 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

## **8. Auction Announcements**

The FCC will use auction announcements to announce items such as schedule changes. All FCC auction announcements will be available by clicking a link on the Automated Auction System.

## **9. Maintaining the Accuracy of FCC Form 175 Information**

As noted in Part II.G., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division at the following address: [auktion46@fcc.gov](mailto:auktion46@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 46. The Bureau requests that parties format any attachments to electronic mail as Adobe<sup>®</sup> Acrobat<sup>®</sup> (pdf) or Microsoft<sup>®</sup> Word documents.

**A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850.** Questions about other changes should be directed to Francis Gutierrez of the Auctions and Industry Analysis Division at (202) 418-0660.

## **V. POST-AUCTION PROCEDURES**

### **A. Down Payments**

After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bid and bidder.

Within ten business days after release of the auction closing notice, the winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bid (actual bid less any applicable small or very small business bidding credit). *See* 47 C.F.R. § 1.2107(b).

### **B. Auction Discount Voucher**

On June 8, 2000, the Commission awarded Qualcomm, Inc. a transferable Auction Discount Voucher

("ADV") in the amount of \$125,273,878.00.<sup>84</sup> This ADV may be used by Qualcomm or its transferee, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003, subject to terms and conditions set forth in the Commission's Order. Qualcomm transferred \$10,848,000.00 of the ADV to a winning bidder in FCC Auction No. 35 and the transferee used its portion of the ADV to pay a portion of one of its winning bids in Auction No. 35.<sup>85</sup> The remaining portion of Qualcomm's ADV could be used to adjust winning bids in another FCC auction, including Auction No. 46.

### **C. Long-Form Application**

Within ten business days after release of the auction closing notice, the winning bidder must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for the license won through Auction No. 46. A winning bidder that is a small or very small business must include an exhibit demonstrating their eligibility for the bidding credit. *See* 47 C.F.R. §§ 1.2112(b). Further filing instructions will be provided to the auction winner at the close of the auction.

### **D. Tribal Land Bidding Credit**

A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally-recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 C.F.R. §§ 1.2107 and 1.2110(f). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit *after* winning the auction when it files its long-form application (FCC Form 601). When filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal land bidding credit, for each market won in the auction, by checking the designated box(es). After stating its intent to seek a tribal land bidding credit, the applicant will have 90 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal land bidding credit are subject to performance criteria as set forth in 47 C.F.R. § 1.2110(f).

For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal land

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<sup>84</sup> Qualcomm Incorporated Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia Circuit Court of Appeals, *Order*, 16 FCC Rcd 4042 (2000).

<sup>85</sup> *See* Supplement to Public Notice Released August 22, 2001 By Wireless Telecommunications Bureau Announcing It Is Prepared to Grant Four C and F Block Broadband Personal Communications Services (PCS) Licenses Upon Full and Timely Payment, Auction Event No. 35, DA 01-2071, *Public Notice*, 16 FCC Rcd 16025 (2001). All of the terms and conditions applicable to Qualcomm's use of the ADV shall apply to its use by a transferee, except that a transferee may not transfer the ADV to an entity other than back to Qualcomm. *See* In the Matter of Qualcomm Incorporated Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia Circuit Court of Appeals, *Order*, 16 FCC Rcd 4042 (2000); *see also* Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Veronica M. Ahern, Attorney for Qualcomm Incorporated (December 22, 2000).

bidding credits and related public notices.<sup>86</sup> Relevant documents can be viewed on the Commission's web site by going to <http://wireless.fcc.gov/auctions> and clicking on *Tribal Land Credits*.

#### **E. Default and Disqualification**

Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 C.F.R. § 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at their final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 C.F.R. § 1.2109(d).

#### **F. Refund of Remaining Upfront Payment Balance**

All applicants that submitted upfront payments but were not winning bidders for the license in Auction No. 46 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, and have no remaining bidding eligibility, must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund request to:

Federal Communications Commission  
Financial Operations Center  
Auctions Accounting Group  
Gail Glasser or Tim Dates  
445 12th Street, SW, Room 1-C863  
Washington, DC 20554

Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418-2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

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<sup>86</sup> *See* Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 11794 (2000); Wireless Telecommunications Bureau Announces Availability of Bidding Credits For Providing Wireless Services To Qualifying Tribal Lands, *Public Notice*, 15 FCC Rcd 18351 (2000); Wireless Telecommunications Bureau Releases Additional Information Regarding the Procedures for Obtaining a Tribal Lands Bidding Credit and List of Tribal Lands, *Public Notice*, DA 00-2836, (rel. December 14, 2000); Wireless Telecommunications Bureau Announces Enhancements to the Universal Licensing System to Help Winning Bidders of FCC Auctions File for Tribal Land Bidding Credits, *Public Notice*, DA 01-613, (rel. March 8, 2001).

NOTE: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates or Gail Glasser at (202) 418-1995.

**Media Contact:** Meribeth McCarrick at (202) 418-0654

**Auctions and Industry Analysis Division:** Francis Gutierrez, Legal Branch, or Lyle Ishida, Auctions Operations Branch, at (202) 418-0660; Lisa Stover, Auctions Operations Branch, at (717) 338-2888

**Public Safety & Private Wireless Division:** Keith Fickner or Brian Marengo, Policy and Rules Branch, at (202) 418-0680

**VI. ATTACHMENT A**

PLACE HOLDER

**VII. ATTACHMENT B**

**FCC AUCTION SEMINAR REGISTRATION FORM**

**Auction No. 46**

The FCC will sponsor a one-day seminar for Auction No. 46 applicants. The seminar is free of charge and will provide information about pre-auction procedures, service and auction rules, conduct of the auction, and the Automated Auction System.

Representatives from each company may attend on a reservation basis, first-come first-served until room capacity is filled. The seminar will be held:

Wednesday, September 18, 2002  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554  
Registration 9:30 a.m. – 10:00 a.m.  
Seminar 10:00 a.m. - 2 p.m.

If hotel accommodations are needed  
Please contact 1-888-225-5322 (option #2) for a list of hotels in the area  
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To register, complete the form below and  
return no later than  
Monday, September 16, 2002, by fax to:

FCC Auction 46  
Auctions Operations Branch  
1270 Fairfield Road  
Gettysburg, PA 17325-7245

FAX: 717-338-2850  
Phone: 717-338-2888

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I/We will attend the Auction No. 46 Seminar, scheduled for Wednesday, September 18, 2002.

Name of attendee: \_\_\_\_\_

Name of attendee: \_\_\_\_\_

Company name: \_\_\_\_\_

Company address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

## VIII. ATTACHMENT C

### ELECTRONIC FILING AND REVIEW OF THE FCC FORM 175

Applicants must submit their FCC Form 175 applications electronically. The FCC recommends submitting your Form 175 via the Internet. As a contingency, you can submit via the FCC Wide-Area Network. FCC Form 175 applications must be submitted and confirmed by **6:00 p.m. ET on Wednesday, September 25, 2002**. Late applications or unconfirmed submissions of electronic data will not be accepted.

Applicants must click the **SUBMIT Application** button on the *Submission* page to successfully submit their FCC Form 175. The electronic filing process consists of an initial filing period and a resubmission period to make minor corrections. During each filing period, submitted applications may be updated and amended multiple times until the filing deadline.

#### A. Software Requirements

Applicants will need to meet the following minimum software requirements:

- Web Browser, either of the following:
  - ◆ Microsoft® Internet Explorer 4.0 or higher (recommended). Your browser must have either Microsoft VM or Java Plug-In Version 1.3.1 installed.
  - ◆ Netscape® Communicator™ 4.0 or higher, with Java Plug-In Version 1.3.1.

Java Plug-In Version 1.3.1 is available for downloading at <http://java.sun.com/getjava/download.html>.

- PDF Viewer: Adobe Acrobat Reader 5.0 or higher (available at <http://www.adobe.com>)
- If you wish to use the download feature on the Search Results page, you will need a .tar file extraction utility, e.g., Winzip (available at <http://www.winzip.com>) or Pkzip for Windows (available at <http://www.pkware.com/shareware>).

#### B. Submitting FCC Form 175 Applications

You can submit FCC Form 175 applications electronically via the Internet. Start your web browser and point it to either <https://auctions.fcc.gov/> (primary location) or <https://auctions2.fcc.gov/> (secondary location). On the FCC Auctions page, click **Form 175 Application & Search** to obtain the Form 175 Homepage.

**Note:** As a contingency, you may submit FCC Form 175 applications via the FCC Wide Area Network, using Dial-Up Networking. To access the Wide Area Network, configure your dial-up

network to dial **800-378-7435**. (Alternatively, you can configure your dial-up network to dial **877-844-2788**.)

## 1. Logging On

The Form 175 Homepage has a Form 175 Logon area at the top right. This area provides fields that let you identify yourself to the system before submitting a Form 175 application.

**Important:** On December 3, 2001, the FCC Registration Number (FRN) became mandatory for all parties conducting business with the FCC. An FRN is mandatory for all filers logging onto the 175 Application System.

Once you have logged on with your FRN, you can click the **New Form** link to obtain the *Profile* page for the auction.

## 2. Uploading Attachments

When uploading attachments from the Form 175 *Attachments* page, you may use a variety of file formats--including Word 2000 or earlier, WordPerfect 6.x or earlier, Adobe PDF, and ASCII text--and you should verify that the files contain all exhibit information. Also note the following about files to be uploaded:

- Files may be no larger than 1.5 Mb.
- Graphics files (e.g., *.bmp*, *.tiff*, *.jpg*) and spreadsheets (e.g., Excel, Lotus) are not supported.
- Word processing files that are uploaded may not contain graphic images.
- You may include hyphens (-) and underscore (\_) symbols in the name of a file to be uploaded, but do not use other punctuation marks or blank spaces. The FCC system will not be able to convert that file.
- The path to a file (i.e., the file name and its directory) must not exceed 60 characters.
- Do not upload a password-protected file. The FCC system will not be able to open it or convert it.
- Do not include your TIN in any attachment to be uploaded. Contents of attachments become public once the Status PN is released.

The system converts each uploaded attachment to PDF format. (The conversion process generally completes within 30 minutes.) Until the system has converted your file to PDF format, the description field shows *Not converted*.

Repeat this procedure for each additional attachment you want to add. When you have finished adding attachments, click the **Continue to CERTIFICATION** button to obtain the *Certification* page.

### a. Unreadable Attachment Files

If you are unable to read an attachment file after it has been converted, please do the following:

1. Re-upload the attachment.
2. If the file still has not been converted properly, then simplify the formatting of the file.

For example, if you are using a Table structure in a WordPerfect document, remove the Table structure and leave the contents of the table, then re-upload the attachment.

After you have successfully re-uploaded an attachment, please delete the old, unreadable attachment files using their **Delete** links.

### **3. Completing the Submission Procedure**

Applicants must press the **SUBMIT Application** button on the *Submission* page to successfully submit their FCC Form 175. Pressing **SUBMIT Application** produces a *Submission Confirmation* page showing the assigned FCC Account Number. During each filing period, submitted applications may be updated and amended multiple times until the filing deadline.

#### **C. Reviewing FCC Form 175 Applications**

Once the FCC has completed the 175 Review process, you can view FCC Form 175 applications electronically by searching for them in the FCC database. Start your web browser and point it to either <https://auctions.fcc.gov/> (primary location) or <https://auctions2.fcc.gov/> (secondary location). Click the **Form 175 Application & Search** link, then click the **SEARCH** link at the top of the page. When the *Form 175 Search* page appears, select the search criteria you want and then click the **Submit** button.

#### **D. Help**

For technical assistance with using FCC software, contact the FCC Technical Support Hotline at (202) 414-1250 (V) or (202) 414-1255 (TTY). The FCC Technical Support Hotline is generally available Monday through Friday from 8 a.m. to 6 p.m. ET. *All calls to the FCC Technical Support Hotline are recorded.*

You can also contact Technical Support via e-mail. To obtain the address, click the **Support** tab on the Form 175 Homepage.

## IX. ATTACHMENT D

### GUIDELINES FOR COMPLETION OF FCC FORM 175 AND EXHIBITS

#### A. FCC Form 175

Because of the significance of the FCC Form 175 application to the auction, bidders should especially note the following:

**Applicant:** Name given is used as your bidder name in the auction.

**Address:** Applicants must provide a street address (**not a Post Office box number**) for the applicant, suitable for mail or private parcel delivery.

**Legal Classification:** Applicants must indicate their legal classification. The FCC Form 175 requires the applicant to classify itself as an individual, joint venture, partnership, trust, corporation, consortium, association, limited liability corporation (LLC) or government entity.

**Applicant Status:** Applicants are requested to indicate their status as a rural telephone company, minority- and/or women-owned business, so that the FCC can monitor its performance in promoting economic opportunities for these “designated entities.”

**Contact person/address:** If the Commission wishes to communicate with the applicant by telephone or fax, those communications will be directed to the contact person identified on the FCC Form 175. Space is provided for an address, telephone number, fax number, and e-mail address. All written communication and registration information will be directed to the applicant’s contact person at the address specified on the FCC Form 175. Applicants must provide a street address for the contact person; **no P.O. Box addresses may be used.**

**Authorized Bidders:** Applicants must list the name(s) of the person(s) (no more than three) authorized to represent them at the auction. Only those individuals listed on the FCC Form 175 will be authorized to place or withdraw bids for the applicant during the auction.

**Bidding Credit Eligibility:** Applicants that qualify for a small or very small business bidding credit must select the applicable bidding credit (15 percent or 25 percent) in the bidding credit eligibility item on the Form 175. Applicants are advised that this is the sole opportunity applicants have to elect small business status and bidding credit level (if applicable). There is no opportunity to change the election once the short-form filing deadline passes on September 25, 2002.

**Telephonic or Electronic Bidding Options:** Bidders may participate in the auction either electronically or telephonically, and must specify their preference. To participate in the auction, every authorized bidder must have a SecurID card, which the FCC will provide free of charge.

**License Selection:** Applicants should select the 1670-1675 nationwide license and confirm by pressing the “save” button.

#### B. Exhibits and Attachments

In addition to the FCC Form 175, applicants must submit additional information required by the FCC’s rules. If attachments are not uploaded, the FCC Form 175 submission process cannot be completed.

Although the FCC does not require a particular format for this information, it has developed the following guidelines to facilitate the processing of short-form applications. The FCC encourages applicants to submit this information using the following format.

**If you find that an attachment has not converted properly to Adobe PDF format, take the following steps:**

- 1) *Simplify the formatting of the file. For example, if using a Table structure in a WordPerfect document, remove the Table structure leaving the contents of the table, re-save the document.*
- 2) *Re-upload the attachment.*
- 3) *When the re-uploaded attachment has successfully converted, delete the failed attachment.*

**NOTE: Applicants should not include sensitive information (i.e., TIN/EIN) on any exhibits to their FCC Form 175s.**

**Exhibit A -- Applicant Identity and Ownership Information:** 47 C.F.R. § 1.2105(a)(2)(ii) requires each applicant to fully disclose the real party or parties-in-interest in an exhibit to its FCC Form 175 application. Each member of an applicant applying to bid as a small or very small business consortium must provide this information. The following information is required:

**1. General Information**

<i>Applicant Status</i>	<i>Required Information</i>
General Partnership	Name, citizenship, and address of all partners, and the share or interest participation of each partner
Limited Partnership	Name, citizenship, and address of each limited partner whose interest in the applicant is equal to or greater than 10 percent (as calculated according to the percentage of equity paid in and the percentage of distribution of profits and losses)
Corporation	Corporate name and address; name, title, and citizenship of a responsible officer or director
Limited Liability Corporation	Corporate name and address; name, address, and citizenship of all members whose interest in the applicant is equal to or greater than 10 percent (as calculated according to the percentage of equity paid in and the percentage of distribution of profits and losses)
Trust	Name, citizenship, and address of trustee
None of the above	Name, citizenship, title or other relation to the applicant, and address of a principal or other responsible person

## 2. Ownership Information

### *Applicant Status*

All applicants

### *Required Information*

Name, citizenship, and address of all controlling interests of the applicant as discussed in Part II.C.3 of this public notice.

All applicants

Name, citizenship, and address of all parties holding 10 percent or more of each class of stock, warrants, options or debt securities and the amount and percentage held.

All applicants

Name of all parties holding a 10 percent or greater interest in the applicant and the specific amount held.

All applicants

List of all parties holding indirect ownership interests in the applicant that equals 10 percent or more, as determined by successive multiplication of the ownership percentages in each link of the vertical ownership chain, except that if the ownership percentage for any link in the chain exceeds 50 percent or represents actual control, it shall be reported as if it were a 100 percent interest.

*Example.* Company A owns 10% of Company B, which owns 60% of Company C, which owns 25% of the applicant. Company B's interest in the applicant would be 25% (the same as Company C's interest since Company B's interest in Company C exceeds 50%), and Company A's interest in the applicant would be 2.5% ( $0.1 * 0.25$ ). Under the 10% attribution benchmark, Company B's interest in the applicant must be reported on the applicant's FCC Form 175 Exhibit A, while Company A's interest in the applicant need not be reported. However, if Company A owned 40% of Company B in the above example, then Company A's interest in the applicant would be 10% ( $0.4 * 0.25$ ), and the applicant would need to report it on the applicant's FCC Form 175 Exhibit A

All applicants

List of any FCC-regulated entity or applicant for an FCC license, in which

- a. the applicant;
- b. any party with a 10 percent or greater interest in the applicant; or
- c. a controlling interest (as discussed in Part II.C.3 of this public notice)

owns a 10 percent or greater interest of the applicant or 10 percent or more of any class of stock, warrants, options or debt securities of the applicant. (*See* 47 C.F.R. § 1.2110) This list must include a description of each such entities' principal business and a description of each such entities' relationship to the applicant.

*Example of a.* The applicant owns 10 percent of Company A (an FCC regulated entity or an applicant for an FCC license). The applicant must list Company A on its FCC Form 175 Exhibit A and provide the required

***Applicant Status***

***Required Information***

information.

*Example of b.* Company A owns 10 percent of the applicant and 10 percent of Company B (an FCC regulated entity or an applicant for an FCC license). The applicant must list both Company A and Company B on its FCC Form 175 Exhibit A and provide the required information.

*Example of c.* Company A owns 55% of the applicant and owns 10 percent of Company B (an FCC regulated entity or an Applicant for an FCC license). The applicant must list both Company A and Company B on its FCC Form 175 Exhibit A and provide the required information.

**Exhibit B – Agreements with Other Parties/Joint Bidding Arrangements:** Applicants must attach an exhibit identifying all parties with which they have entered into any agreements, arrangements or understandings which relate in any way to the license being auctioned, including any relating to the post-auction market structure. *See* 47 C.F.R. §1.2105(a)(2)(viii).

Be aware that pursuant to Certification (4) on the FCC Form 175, the applicant certifies that it will not enter into any explicit or implicit agreements or understandings of any kind with parties not identified in the application regarding bid amounts, bidding strategies, or the particular licenses on which the applicant will or will not bid. *See* 47 C.F.R. § 1.2105(a)(2)(ix). *To prevent collusion, the Commission’s Rules generally prohibit applicants from communicating concerning bids, bidding strategies, or settlements during the period between the initial short-form applications filing deadline and the deadline for down payment on a license won in the auction.* 47 C.F.R. § 1.2105(c).

**Exhibit C – Status as a Small or Very Small Business:** Applicants claiming status as a small or very small business must attach an exhibit providing the following information regarding this status.

***Entity***

Applicant

***Required Information***

Average annual gross revenues for the preceding three years set forth *both separately (e.g., for each of the preceding three years individually) and in the aggregate* (for all of the preceding three years combined). Certification that the average of the aggregated annual gross revenues for the preceding three years do not exceed the required limit, or providing average gross revenues for the 3-year period without providing the gross revenues for each of the preceding three years, is insufficient.

Applicant’s Affiliates  
*See* 47 CFR §§ 1.2110, 1.2112

Same information required as discussed above

Applicant’s Controlling Interests  
*See* 47 CFR §§ 1.2110, 1.2112.

Same information required as discussed above

*Example.* The applicant had gross revenues of \$500,000 in 1999, \$1,000,000 in 2000, and \$3,000,000 in 2001, with average gross revenues for that time period of \$1,500,000. The applicant owns 60% of Company A, making Company A an affiliate of the applicant under

**Entity**

**Required Information**

Section 1.2110(c)(5)(i)(B). Company B owns 52% of the applicant, making Company B a controlling interest of the applicant, as defined in Part II.C.3 of this public notice. Company B owns 100% of Company C, making Company C an affiliate of the applicant's controlling interest, under Section 1.2110(c)(5)(i)(C). The applicant's Exhibit C would look like this:

Applicant Name

1999 gross revenues	\$ 500,000	
2000 gross revenues	\$ 1,000,000	
2001 gross revenues	\$ 3,000,000	
Average gross revenues for the preceding 3 years	1,500,000	\$

Company A (an affiliate of the applicant)

1999 gross revenues	\$ enter amount	
2000 gross revenues	\$ enter amount	
2001 gross revenues	\$ enter amount	
Average gross revenues for the preceding 3 years	enter amount	\$

Company B (a controlling interest in the applicant)

1999 gross revenues	\$ enter amount	
2000 gross revenues	\$ enter amount	
2001 gross revenues	\$ enter amount	
Average gross revenues for the preceding 3 years	enter amount	\$

Company C (an affiliate of the applicant's controlling interest)

1999 gross revenues	\$ enter amount	
2000 gross revenues	\$ enter amount	
2001 gross revenues	\$ enter amount	
Average gross revenues for the preceding 3 years	\$ enter amount	

**NOTE:** Each member of an applicant that is applying to bid as a consortium of small or very small businesses must provide this information and qualify for the claimed status.

**Exhibit D – Information Required of All Applicants Regarding Prior Defaults and Prior Delinquencies:**

Each applicant must include at Exhibit D a statement made under penalty of perjury indicating whether the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interest have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, for each of its controlling interests and affiliates, and for each affiliate of its controlling interests as defined by Section 1.2110 of the Commission’s rules.

**Exhibit E – Information Requested of Designated Entities:** Applicants owned by minorities or women, or that are rural telephone companies, as defined in 47 C.F.R. § 1.2110(c), may attach an exhibit regarding this status. This information, in conjunction with the information requested on the FCC Form 175, will assist the Commission in monitoring the participation of these “designated entities” in its auctions.

**Exhibit F – Miscellaneous Information:** Applicants wishing to submit additional information should include it in Exhibit F.

**Waivers:** Applicants requesting waiver of any rules must submit a statement of reasons sufficient to justify the waiver sought. *See* 47 C.F.R. §§ 1.3, 1.925.

**Certifications:** Applicants should read carefully the list of certifications on the FCC Form 175. These certifications help to ensure a fair and competitive auction and require, among other things, disclosure to the Commission of certain information on applicant ownership and agreements or arrangements concerning the auction. Submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form’s instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

**Completeness:** Applicants must submit all information required by the FCC Form 175 and by applicable rules. Failure to submit required information by the resubmission date will result in dismissal of the application and inability to participate in the auction. *See* 47 C.F.R. § 1.2105(b).

**NOTE: Applicants must press the “SUBMIT Application” button on the “Submission” page to successfully submit their FCC Form 175.**

**Continuing Accuracy:** Each applicant is responsible for the continuing accuracy and completeness of information furnished in the FCC Form 175 and its exhibits. 47 C.F.R. § 1.65. It is the FCC’s position that during the conduct of an auction, thirty business days from a reportable change is a reasonable period of time. Applicants are reminded that they consent to be audited in the certification section of the FCC Form 175 (see certification item number 6).

Applicants are reminded that all information required in connection with applications to participate in spectrum auctions is necessary to determine the applicants’ qualifications, and as such will be available for public inspection. Required proprietary information may be redacted, or confidentiality may be requested, following the procedures set forth in 47 C.F.R. § 0.459. Such requests must be submitted by electronic mail to

the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: [auction46@fcc.gov](mailto:auction46@fcc.gov), in which case the applicant must indicate in Exhibit F that it has filed a confidentiality request. Because the required information bears on applicants' qualifications, the FCC envisions that confidentiality requests will not be routinely granted.

The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 46. The Bureau requests that parties format any attachments to electronic mail as Adobe<sup>®</sup> Acrobat<sup>®</sup> (pdf) or Microsoft<sup>®</sup> Word documents.

**A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850.**

## X. ATTACHMENT E

### AUCTION-SPECIFIC INSTRUCTIONS FOR FCC REMITTANCE ADVICE (FCC FORM 159-February 2000 edition)

#### A. Upfront Payments

The following information supplements the standard instructions for FCC Form 159 (Revised 2/00), and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction No. 46. Applicants need to complete FCC Form 159 carefully, since:

- **Mistakes may affect their bidding eligibility; and**
- **Lack of consistency between information set forth in FCC Form 159 (Revised 2/00), FCC Form 175, long-form application, and correspondence about an application may cause processing delays.**

Therefore appropriate cross-references between the FCC Form 159 Remittance Advice and the FCC Form 175 Short Form Application are described below:

Block Number	Required Information
1	LOCKBOX # - Enter "358420"
2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as FCC Form 175.
3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/00).
4-8	Street Address, City, State, ZIP Code - Enter the street mailing address ( <b>not Post Office box number</b> ) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN – Enter the payer’s ten-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).
12	Payer TIN – Enter the payer’s nine-digit Taxpayer Identification Number (TIN).
24A	Payment Type Code - Enter "A46U"

- 25A            Quantity - Enter the number "1"
- 26A            Fee Due - Amount of Upfront Payment
- 27A            Total Fee - Will be the same amount as 26A.
- 28A            FCC Code 1 - Enter the number "46" (indicating Auction No. 46).

NOTES:

- Do not use Remittance Advice (Continuation Sheet), FCC Form 159-C, for upfront payments.
- If applicant is different from the payer, complete blocks 13 through 22 for the applicant, using the same information shown on FCC Form 175. Otherwise leave them blank.
- Since credit card payments will not be accepted for this auction, leave Section E blank.

**B.        Winning Bidder Requirements, Down Payments and Final Payments**

Specific information regarding down payments and final payments will be included in a post-auction public notice announcing the winning bidders.

## XI. ATTACHMENT F

### Minimum Acceptable Bids, Bid Increments, and the Smoothing Formula

The Automated Auction System calculates the minimum acceptable bids and bid increments for each license with a standing high bid in each round of the auction based on all bidding activity for the license. For this auction, the Commission will use a standard smoothing methodology to calculate minimum acceptable bids and bid increments.

The smoothing formula calculates minimum acceptable bids by first calculating a *percentage increment*, not to be confused with the *bid increment*, for each license based on a weighted average of the activity received on each license in all previous rounds. This methodology tailors the percentage increment for each license based on activity, rather than setting a global increment for all licenses.

In a given round, the calculation of the percentage increment for each license is made at the end of the previous round. The computation is based on an activity index, which is calculated as the weighted average of the activity in that round and the activity index from the prior round. The activity index at the start of the auction (round 0) will be set at 0. The current activity index is equal to a weighting factor times the number of new bids received on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%).

#### Equations

$$A_i = (C * B_i) + ((1-C) * A_{i-1})$$

$$I_{i+1} = \text{smaller of } ((1 + A_i) * N) \text{ and } M$$

$$X_{i+1} = I_{i+1} * Y_i$$

where,

$A_i$  = activity index for the current round (round i)

C = activity weight factor

$B_i$  = number of bids in the current round (round i)

$A_{i-1}$  = activity index from previous round (round i-1),  $A_0$  is 0

$I_{i+1}$  = percentage increment for the next round (round i+1)

N = minimum percentage increment or percentage increment floor

M = maximum percentage increment or percentage increment ceiling

$X_{i+1}$  = dollar amount associated with the percentage increment

$Y_i$  = high bid from the current round

Under the smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the high bid from the current round plus the dollar amount associated with the percentage increment, with the result rounded to the nearest thousand if it is over ten thousand, to the nearest hundred if it is under ten thousand but over one thousand, or to the nearest ten if it is below one thousand.

## Examples

License 1

$C=0.5$ ,  $N = 0.1$ ,  $M = 0.2$

### Round 1 (2 new bids, high bid = \$1,000,000)

1. Calculation of percentage increment for round 2 using the smoothing formula:

$$A_1 = (0.5 * 2) + (0.5 * 0) = 1$$

$$I_2 = \text{The smaller of } ((1 + 1) * 0.1) = 0.2 \text{ or } 0.2 \text{ (the maximum percentage increment)}$$

2. Calculation of dollar amount associated with the percentage increment for round 2 (using  $I_2$  from above):

$$X_2 = 0.2 * \$1,000,000 = \$200,000$$

3. Minimum acceptable bid for round 2 = \$1,200,000

### Round 2 (3 new bids, high bid = \$2,000,000)

1. Calculation of percentage increment for round 3 using the smoothing formula:

$$A_2 = (0.5 * 3) + (0.5 * 1) = 2$$

$$I_3 = \text{The smaller of } ((1 + 2) * 0.1) = 0.3 \text{ or } 0.2 \text{ (the maximum percentage increment)}$$

2. Calculation of dollar amount associated with the percentage increment for round 3 (using  $I_3$  from above):

$$X_3 = 0.2 * \$2,000,000 = \$400,000$$

3. Minimum acceptable bid for round 3 = \$2,400,000

### Round 3 (1 new bid, high bid = \$2,400,000)

1. Calculation of percentage increment for round 4 using the smoothing formula:

$$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$$

$$I_4 = \text{The smaller of } ((1 + 1.5) * 0.1) = 0.25 \text{ or } 0.2 \text{ (the maximum percentage increment)}$$

2. Calculation of dollar amount associated with the percentage increment for round 4 (using  $I_4$  from above):

$$X_4 = 0.2 * \$2,400,000 = \$480,000$$

3. Minimum acceptable bid for round 4 = \$2,880,000

As stated above, until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded as described above, and the minimum opening bid. That is,  $I = (\text{minimum opening bid})(1 + N)\{\text{rounded}\} - (\text{minimum opening bid})$ . Therefore, when  $N$  equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

## XII. ATTACHMENT G

### SUMMARY LISTING OF DOCUMENTS FROM THE COMMISSION AND THE WIRELESS TELECOMMUNICATIONS BUREAU ADDRESSING APPLICATION OF THE ANTI-COLLUSION RULES

#### A. Commission Decisions:

*Second Report and Order* in PP Docket No. 93-253, FCC 94-61, 9 FCC Rcd. 2348, 2386-2388 (1994), paragraphs 221-226.

*Fifth Report and Order* in PP Docket No. 93-253, FCC 94-178, 9 FCC Rcd. 5532, 5570-5571 (1994), paragraphs 91-92.

*Fourth Memorandum Opinion and Order* in PP Docket No. 93-253, FCC 94-264, 9 FCC Rcd. 6858, 6866-6869 (1994), paragraphs 47-60.

*Second Memorandum Opinion and Order* in PP Docket No. 93-253, FCC 94-215, 9 FCC Rcd. 7245, 7253-7255 (1994), paragraphs 48-55.

*Memorandum Opinion and Order* in PP Docket No. 93-253, FCC 94-295, 9 FCC Rcd. 7684, 7687-7689 (1994), paragraphs 8-12.

In re Commercial Realty St. Pete, *Notice of Apparent Liability for Forfeiture*, 10 FCC Rcd. 4277 (1995),  
In re Commercial Realty St. Pete, *Memorandum Opinion and Order*, 11 FCC Rcd. 15,374 (1996).

In re Applications of Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd. 17,970 (1997) (petition for partial reconsideration pending).

Amendment of Part 1 of the Commission's rules -- Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, FCC 97-413, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd. 374, 463-469 (1997), paragraphs 155-166.

In re Application of US West Communications, Inc., *Notice of Apparent Liability for Forfeiture*, 13 FCC Rcd 8286 (1998); In the Matter of Notice of Apparent Liability for Forfeiture of US West Communications, Inc., *Order*, FCC 99-90 (May 7, 1999).

In re Application of Western PCS BTA I Corporation, *Notice of Apparent Liability for Forfeiture*, FCC 98-42 (March 16, 1998); In the Matter of Notice of Apparent Liability for Forfeiture of Western PCS BTA I Corporation, *Memorandum Opinion and Order*, 14 FCC Rcd 21571, 21577-78, ¶ 20 (rel. Dec. 13, 1999).

In the Matter of Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001).

## **B. Wireless Telecommunications Bureau Decisions:**

Amendment of Parts 21 and 74 of the Commission's rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, *Order*, 11 FCC Rcd. 9655 (Wireless Tel. Bur. 1995).

In re Applications of GWI PCS, Inc. For Authority to Construct and Operate Broadband PCS Systems Operating on Frequency Block C, *Memorandum Opinion and Order*, 12 FCC Rcd. 6441 (Wireless Tel. Bur. 1997).

In re Applications of Mercury PCS II, LLC, For Facilities in the Broadband Personal Communications Services in the D, E, and F Blocks, *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd. 18,093 (Wireless Tel. Bur. 1997).

In the Matter of Applications of High Plains Wireless, L.P., For Authority to Construct and Operate Broadband PCS Systems on Frequency Blocks D, E, and F, *Memorandum Opinion and Order*, 12 FCC Rcd. 19,627 (Wireless Tel. Bur. 1997).

In the Matter of Applications of Mercury PCS II, LLC, For Authority to Construct and Operate Broadband PCS Systems on Frequency Blocks D, E, and F, *Memorandum Opinion and Order*, 13 FCC Rcd. 5756 (Wireless Tel. Bur. 1997).

### **1. Public Notices:**

Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd. 9645 (1995).

FCC Staff Clarifies Application of Anti-Collusion Rule to Broadband PCS 'C' Block Reauction, *Public Notice*, 11 FCC Rcd. 7031 (1996).

Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, *Public Notice*, 11 FCC Rcd. 10,134 (1996).

Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, DA 98-37 (rel. January 9, 1998).

### **2. Letters from the Office of General Counsel and the Wireless Telecommunications Bureau:**

*Letter to Gary M. Epstein and James H. Barker from William E. Kennard, General Counsel, Federal Communications Commission* (released October 25, 1994).

*Letter to Alan F. Ciamporcero from William E Kennard, General Counsel, Federal Communications Commission* (released October 25, 1996).

*Letter to R. Michael Senkowski from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau* (released December 1, 1994).

*Letter to Leonard J. Kennedy from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau* (released December 14, 1994).

*Letter to Jonathan D. Blake and Robert J. Rini from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, DA 95-2404* (released November 28, 1995).

*Letter to Mark Grady from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, 11 FCC Rcd. 10,895* (1996).

*Letter to David L. Nace from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, 11 FCC Rcd. 11,363* (1996).

*Letter to Elliott J. Greenwald from Christopher J. Wright, General Counsel, Federal Communications Commission* (released April 6, 1998).

*Letter to Robert Pettit, Wiley, Rein & Fielding from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 00-2905* (released December 26, 2000).

### **3. Civil Actions Initiated by U.S. Department of Justice:**

*U.S. v. Omnipoint Corp.*, Proposed Final Judgements and Competitive Impact Statements, Department of Justice, 63 FR 65,228 (November 25, 1998).

“Justice Department Sues Three Firms Over FCC Auction Practices,” *Press Release, U.S. Department of Justice* (November 10, 1998).

Complaint, *U.S. v. Omnipoint Corp.*, No. 1:98CV02750 (D.D.C. November 10, 1998).

Complaint, *U.S. v. Mercury PCS II, L.L.C.*, No. 1:98CV02751 (D.D.C. November 10, 1998).

Complaint, *U.S. v. 21st Century Bidding Corp.*, No. 1:98CV02752 (D.D.C. November 10, 1998).

#### **How to Obtain Copies of the Anti-Collusion Decisions:**

Many of the documents listed in this attachment can be retrieved from the following Commission web site: <http://wireless.fcc.gov/auctions/anticollusion>

The documents may be located by using our search engine (select the link “search”). Documents retrieved from the web site are available in various formats including Word, WordPerfect, Acrobat Reader, Excel, and ASCII Text. To review a document in its entirety, including footnotes, it is necessary to access the document in WordPerfect, MS Word, or Acrobat Reader.

Additionally, all of the documents can be ordered in hard copy for a fee from the Commission’s contractor, Qualex International at (202) 863-2893.